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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1230th MEETING

Held at Headquarters, New York,
on Wednesday, 7 April 1993, at 10 a.m.

Chairman: Mr. ANDO

later: Mr. EL-SHAFEI
(Vice-Chairman)

later: Mr. ANDO
(Chairman)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of the Islamic Republic of Iran (CCPR/C/28/Add.15)

1. At the invitation of the Chairman, Mr. Mehrpour and Mr. Nasseri (Islamic Republic of Iran) took places at the Committee table.

2. The CHAIRMAN recalled that consideration of the report had been held over from the forty-sixth session, in Geneva, and invited the delegation to continue its replies to the questions raised after the Committee had heard its statement on section II of the list of issues.

3. Mr. MEHRPOUR (Islamic Republic of Iran) referred to Mr. Sadi's question concerning the justification under Islamic law for imposing the death penalty for drug trafficking and armed robbery which had not entailed any deaths. First, he observed that the Islamic Republic of Iran had no interest in increasing the number of crimes for which the death penalty could be imposed. On the contrary, its intention was to impose the death penalty as little as possible. According to Islam, the death penalty could only be justified if lives were endangered by the crime in question. The Koran contained verses stipulating the death penalty for murder and for corruption, which various Islamic scholars had interpreted to mean resorting to arms and posing a threat to security. Accordingly, a person could receive the death penalty for committing a crime which did not necessarily lead to murder, but which created fear and corruption. However, that was dependent on the seriousness of the crime and its effects, banishment being the alternative penalty for corruption.

4. While he accepted the emphasis in article 6, paragraph 2, of the Covenant that the death penalty could only be imposed for "the most serious crimes", it had to be said that no further specification as to those crimes was given. Different countries had different concepts of what constituted a serious crime. His country was not alone in regarding drug offences as serious crimes which merited the death penalty in view of their pernicious and destabilizing effects on society. If the situation in his country were to change, the penalty could be made less severe. Currently, however, as the world's second largest drugs producer (according to a United Nations report), it was particularly susceptible to the drug problem, which was intensified by virtue of its geographical location.

5. With a view to explaining the background to the severe penalties currently imposed for drug offences, he reviewed the anti-drug legislation enacted in his country. In 1955, a law had been promulgated prescribing a penalty of 6 to 12 months' imprisonment for the cultivation of opium. Addicts had been cautioned to abandon their habit, failing which they faced three months' imprisonment. However, drug-related activities had continued to escalate, and a new law, promulgated in 1959, had increased the penalty for drug manufacturers and importers to between 5 and 15 years' imprisonment, plus a fine. In 1967, a law had been ratified permitting the cultivation of opium for medicinal use, as a result of which the number of addicts had risen dramatically. Further laws

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had thus been enacted in 1968 and 1981, referring serious drug cases to the military courts and imposing the death penalty for anyone selling, manufacturing or importing certain amounts of heroin or opium. However, drug use had become still more widespread, with the involvement of armed gangs of drug smugglers, and the situation had grown more critical in terms of corruption and damage caused to society, which were treated more seriously following the Islamic Revolution. The opinions of Islamic scholars had therefore been explored and the different aspects of the problem discussed at length by the Islamic judiciary. The outcome had been the 1988 anti-drugs law, which still imposed the death penalty for various drug offences (see document CCPR/C/28/Add.15, paras. 61 (a), (b), (c) and (d)).

6. The 1988 law was less stringent in terms of the quantity of drugs in respect of which the death penalty could be imposed; for example, in some instances, the quantity of drugs required for imposition of the death penalty was currently five kilograms as opposed to as little as one gram before. In addition, alternative penalties of imprisonment and fines were currently imposed in the case of first offenders and smaller quantities of drugs. The law also provided that addicts must be offered the possibility of treatment; the Islamic Republic of Iran currently had 17 rehabilitation centres, where addicts were cured and received professional and vocational training. He recalled that, according to a United Nations report, other countries imposed the death sentence for offences involving lesser quantities of narcotic drugs and psychotropic substances. In any event, persons guilty of possessing small amounts of opium or heroin were rarely executed; most executions involved individuals with prior criminal records found to be in possession of very large quantities of drugs. A first offence was generally treated with leniency.

7. In reply to Mr. Sadi's second question, concerning torture, he said that not only was torture forbidden by article 38 of his country's Constitution, but article 39 ensured that detained persons would be treated with respect. Articles 58 and 59 of the Islamic Punishment Law provided for a penalty of up to one year in prison for the torture of an accused person; the individual ordering the torture would also be prosecuted. The provisions of the Constitution and of the Islamic Punishment Law left no room for doubt about the prohibition of torture in his country.

8. With regard to Mr. Sadi's final question, a sentence of death or life imprisonment could be appealed, according to the Law pertaining to Revision of Court Judgements and the Manner of Their Investigation adopted in 1988. In 1992, 920 cases decided by the Revolutionary Courts had been reviewed by the Supreme Court. Five hundred and forty lower court cases were under review for appeal and 190 decisions had been nullified for various reasons including improper legal procedures during the trial stage. The definition of corruption included the use of arms to create terror and to destabilize society, and such crimes justified severe punishment. Some cases of armed robbery, as well as collective acts intended to destabilize society, were also covered in the laws against corruption.

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9. Several members had referred to the death sentence passed on the writer Salman Rushdie and had requested an explanation of its relationship to the Covenant. The Western world must understand that Mr. Rushdie's book was a severe insult to Islam and to the Prophet, a person considered by most in the Islamic world as the messenger of God's Word. That insult had caused a reaction in many countries besides Iran. Article 19, paragraph 2, of the Covenant guaranteed the right to freedom of expression, but paragraph 3 further stated that the exercise of that right carried with it special duties and responsibilities and that it might be subject to certain limitations. An individual who had disregarded those limitations should be punished. Moreover, it was important to point out that the Iranian Parliament had not passed any law calling for Mr. Rushdie's execution, nor had any court condemned him. The Imam Khomeini, as a religious leader and not as a representative of the Government, had issued a religious decree, or fatwa, against him. Any action taken in response to that decree would be based on an individual's religious belief.

10. Mr. El-Shafei, Vice-Chairman, took the Chair.

11. Mr. MEHRPOUR (Islamic Republic of Iran) said that, in Iranian tradition, rape and adultery were very serious crimes and, in certain cases, Islamic criminal law provided for the death sentence. The severity of the punishment was based on the widely held view that such crimes destabilized the foundations of the family. With respect to Mrs. Chanet's observation that the death sentence should be pronounced in accordance with the legislation in force, he drew attention to article 36 of the Constitution of the Islamic Republic of Iran, which stated that "the passing and execution of a sentence must be only by a competent court and in accordance with the law". Moreover, article 169 of the Constitution stipulated that "no act or omission may be regarded as a crime with retrospective effect on the basis of a law framed subsequently". Once the law established that an act constituted a crime, that act became punishable under the law. In cases where a new law that decreased a sentence was adopted, the decreased sentence would be applied to persons who had received harsher sentences under the old law.

12. Under article 167 of the Constitution, the judge was bound to endeavour to try each case on the basis of the codified law. In cases where such law did not exist, he had to deliver his judgement on the basis of authoritative Islamic sources and authentic fatwa (religious decrees). The judge could not, on the pretext of the silence or deficiency of the law in the matter, or its brevity or its contradictory nature, refrain from admitting and examining cases and delivering his judgement. In countries, such as France, that were bound entirely by codified law, the judge, in issuing the sentence, had to consult the civil laws. In Iran, however, when the law was silent on certain acts and crimes, the judge could consult other sources of law, such as common law tradition, and he could seek the opinion of Islamic scholars.

13. Mrs. Chanet had noted that Amnesty International had reported that 2,500 people had been executed for political reasons in Iran during a six-month period (mid-1988 to the beginning of 1989). That was not true. Under Iranian law, no one could be executed for political reasons alone. Mrs. Chanet had referred

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to the report of the Special Representative of the Commission on Human Rights (E/CN.4/1992/34) in which it was stated that an assistant professor at the University of Tabriz had allegedly been executed for having criticized the Government's economic and social policy. The fact was that the assistant professor had insulted the principles of the Islamic Republic of Iran, and his students had brought him to the prosecutor's office where he had been questioned and sentenced to four months in prison. The assistant professor's sentence had subsequently been suspended but he had been warned that the sentence would be carried out if he committed another crime. The assistant professor was still teaching at the University of Tabriz.

14. With regard to corporal punishment, Mrs. Chanet had asked whether the Iranian authorities would consider bringing their legislation into line with the Covenant. Iranian criminal law provided for certain forms of corporal punishment, including flogging and stoning. If a court decided that a person who had been found guilty should be flogged, the flogging was not considered to be torture, since that form of punishment existed under Islamic law. The advisability of inflicting such forms of corporal punishment was currently being discussed at the highest levels of Government and by lawyers and jurists. For certain crimes, the sentence of flogging had been abolished and commuted to imprisonment or the payment of a fine.

15. With respect to the query raised about the status of women in Iran, he noted that all women were allowed to vote and to be elected to parliament. A few months earlier, there had been a seminar on the question of whether or not women should have the right to be elected as judges.

16. Mr. Ando resumed the Chair.

17. Mr. MEHRPOUR (Islamic Republic of Iran) replying to Mrs. Higgins' query whether non-Islamic religious beliefs could be invoked as a reason for imposing the death penalty, said that article 23 of the Constitution stated that no one could be punished or prosecuted for his beliefs. Iranian criminal legislation enumerated all crimes and corresponding punishments, and non-Islamic belief was not among the crimes. In practice, no court had ever prosecuted any individual for his beliefs but even if it had, the Supreme Court would have prevented the sentence from being carried out. If persons belonging to other religious denominations had been executed, it was because of crimes they had committed and not because of their beliefs. A number of members of the Committee had referred to Baha'is who had been or were about to be executed. The report of the Special Representative of the Commission on Human Rights (E/CN.4/1993/41) had given specific names. Two of those said to have been executed had indeed been sentenced to death by a lower court on other charges, including treason, but the sentence had subsequently been set aside on appeal to the Supreme Court because the degree of treason had not warranted capital punishment and because the court had failed to appoint a lawyer even though the accused had refused legal representation.

18. He had already indicated that the Islamic Revolutionary Courts still existed, as part of the judiciary branch of the Ministry of Justice. As he had said, their verdicts, issued on the basis of criminal legislation, could be

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appealed and indeed many had in practice been overruled. The misunderstanding on that point in the report of the Special Representative was perhaps due to the fact that article 11 of the Act establishing the Revolutionary Courts in the first year of the Revolution had stipulated that their judgements would be final; however, that Act had been automatically repealed upon passage of the 1988 Law pertaining to Revision of Court Judgements and the Manner of Their Investigation, discussed in paragraph 32 of the periodic report. The latter law had been prompted by a 1988 court ruling in Qom that all sentences of capital punishment must be reviewed, and that all judgements by all lower courts were subject to appeal.

19. Mr. Dimitrijević had argued that the Covenant was an expression of fundamental humanitarian principles that were beyond interpretation according to any particular culture. That was also his Government's understanding of the Covenant, as an embodiment of universal principles of justice and humaneness. It was on specific issues, however, that interpretations would differ from culture to culture - for example, in the definition of certain crimes or of the civil rights of individuals. Those who practised justice did so in a humanitarian way, but their interpretation of how the laws should be executed would differ.

20. The Islamic Republic of Iran had, like the previous regime, accepted the Covenant. The Republic, however, had an inescapable obligation to the majority of its people, who had by their vote established that Iran must have a Government based on Islamic law. All legislation in the country must therefore be based on Islamic laws and ratified as such. In its legislation, his country was trying to move in the direction of achieving the clarity of the Covenant, and in the process was reviewing even laws which its leaders had said were fixed and unalterable in Islamic law. He would not deny that it was a real problem. Regardless of the Committee's categorical interpretation of the provisions of the Covenant, his Government, when an Islamic decree was at odds with a provision of the Covenant, could not take sides without alienating its people and its elected parliament, who had voted for the decree. There should not be dogmatism on either side; his Government for its part was trying to reduce dogmatism. He had published in the Islamic Republic of Iran a report on the Covenant and the work of the Committee given to the delegation at the previous session, and Iranian jurists had been asked to review the issue of discrepancies between Iranian law and the Covenant. He would be glad to receive further suggestions on that point by the Committee.

21. Mr. Dimitrijević's understanding that deliberate murder, a serious crime punishable by death, was regarded as a private matter to be settled between the murderer and the victim's next of kin was not quite accurate. There were two aspects to deliberate murder, the public and the private. The crime violated the dignity of society and thus the police and the courts must step in to find and punish the perpetrator, following a series of procedures laid down in the laws and court regulations of the country. However, in addition to society, the victims had a stake in the matter, and if when the murderer received the mandatory death sentence the victim's family forgave him, the Government would not insist on his execution.

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22. The remaining questions raised by members of the Committee had already been dealt with.

23. Mr. SADI asked whether it was true that Islam condoned the continued application of the punishment of amputation on condition that the person so sentenced would be guaranteed full economic security.

24. Mr. MEHRPOUR (Islamic Republic of Iran) said that that particular form of punishment was under review.

25. Mr. NASSERI (Islamic Republic of Iran) observed that many of the Committee's perceptions of failings in his country seemed to be dictated by the not uncommon depiction of it, in the media and elsewhere, as a country set apart, ruled in the absence of laws by judges whose decrees were based on a subjective interpretation of crimes. Most of the Committee's questions had focused on the Republic's conformity with the provisions of the Covenant. His Government had concluded that it did conform. It cherished Islamic law, including its penal laws, and was privileged to have been one of the first countries to reapply it in modern times. The whole enterprise was a new one, and his Government must do much searching to be sure to be faithful both to Islamic law and to its commitments to international law. It seemed to be a source of difficulty for the Committee that the people had opted to be governed exclusively by Islamic law. Another main problem had been the interpretation of what constituted serious crimes. Also, the prevailing view seemed to be that there were many executions in the Islamic Republic of Iran. With regard to the sensational cases related to drug crimes, he explained that a very serious infiltration of drugs had developed on the country's unguarded eastern border while the Government had been occupied during the nine-year war with Iraq in defending its western border, and that situation had currently reached crisis proportions which required a very tough approach if it was to be controlled.

The meeting rose at 1.10 p.m.